

Staff Request for Comments

Sections 9-250, 13-101 and 13-505 of the Illinois Public Utilities Act grant the Commerce Commission explicit authority to determine whether rates for competitive telecommunications services (and changes to such rates) are “just and reasonable”. The Commission has not previously investigated competitive telecommunications services to determine whether they are just and reasonable. Given recent changes in the competitive landscape, and the promise of a more competitive environment in the future, the Commission Staff believes it appropriate at this time to solicit informal comments from the public and other interested parties as to when and how the Commission should undertake such an investigation.

In order to focus the comments, the Commission Staff has prepared a number of questions regarding the “just and reasonable” issue. Staff welcomes any comments on the issue, but is most interested in answers to the questions we have prepared.

Comments should be filed with the Director of the Telecommunications division by February 28, 2006, at the following address.

John Hester
Director, Telecommunications Division
Illinois Commerce Commission
Suite C-800
160 N. LaSalle St.
Chicago, IL
60601

- Q Should the Commission’s decision(s) concerning whether to investigate rates for competitive telecommunications services differ according to provider types and sizes, service or product types, market conditions, service areas, or other such factors? If so, please explain how the Commission’s exercise of its authority should vary across such differing factors and why.
- Q Should the Commission require that carriers submit information (e.g., cost studies) to assist it in determining whether to open an investigation into the justness and reasonableness of rates for competitive telecommunications services? If not, please explain.

If yes, please address (at a minimum) the following in your answer:

- a) The source of the Commission's authority to require such information.
- b) A list of such potential information, the purpose of each item, and the circumstances under which the item should be provided.
- c) An assessment of whether, and if so why, tariff filings that exceed certain thresholds require more detailed explanations and backup than tariff filings that do not exceed these thresholds? If yes, please provide examples of appropriate thresholds and the additional information that should be required with such a filing.
- d) An assessment of whether the Commission should specifically impose on carriers proposing rate changes a requirement that the carrier provide *prima facie* evidence that the proposed changes yield just and reasonable rates?
- e) An assessment of whether the Commission should require carriers to file annual demand, rate and/or other data related to their provision of competitive services including an explanation of what should be filed and under what circumstances.

Q. Are there any specific factors or circumstances that might automatically "trigger" a Commission Section 9-250 investigation into whether a rate change for a competitive telecommunications service is just and reasonable? If yes, please provide an explanation or justification for each proposed trigger, an analysis of the how such a trigger would be applied, and an explanation of what information would be necessary to apply such a trigger. Examples of factors that might be incorporated into such criteria are:

- a) markup over incremental cost;
- b) number of competitors providing the service;
- c) comparison to rates charged by competitors for similar or identical services;
- d) percentage increase over existing rate;
- e) complaints;
- f) discrimination;
- g) reasonableness of profits;
- h) markup over fully allocated costs;
- i) consistency with other specified statutory and/or public policy goals;
- j) the availability of substitute services;
- k) elasticity of demand; and
- l) industry studies relating to the services in question.

Q. Should the Commission investigate (through a Section 9-250 hearing) whether a rate change for a competitive telecommunications service is just and reasonable without previously determining a “just and reasonable” standard appropriate for competitive telecommunications service rates? That is, should the Commission establish criteria in a rulemaking or other “global docket” to determine whether a rate for a competitive telecommunications service is just and reasonable or should the Commission review each tariff on a case by case basis? Please explain.

Q Please explain how the “just and reasonable” concept is most appropriately applied to competitive telecommunications services. Please include the following in your answer:

- a) Any case law you believe to be directly pertinent or applicable.
- b) A proposed “definition” of just and reasonable - as applied to rates for competitive telecommunications services.
- c) A list of criteria that would allow the Commission to determine whether a rate for a competitive telecommunications service is just and reasonable. Please provide an explanation or justification for each proposed criterion, an analysis of how such criteria would be applied, and an explanation of what information would be necessary to apply such criteria. Examples of factors that might be incorporated into such criteria are:
 - i) markup over incremental cost;
 - ii) number of competitors providing the service;
 - iii) comparison to rates charged by competitors for similar or identical services;
 - iv) percentage increase over existing rate;
 - v) complaints;
 - vi) discrimination;
 - vii) reasonableness of profits;
 - viii) markup over fully allocated costs;
 - ix) consistency with other specified statutory and/or public policy goals;
 - x) the availability of substitute services;
 - xi) elasticity of demand; and
 - xii) industry studies relating to the services in question.

Q. Can the Commission rely on market forces to ensure that rates for competitive telecommunications services (as identified and specified by the PUA) are just and reasonable without abrogating its responsibility to review such rates under Section 13-505?

- a) If yes, please identify and explain any circumstances required to make this possible.

- b) If no, please explain how any such circumstances can be objectively identified and measured.